IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION NO : 13920 of 2003

Between:

1 Golla Ankamma, W/o. G.Polaiah
R/o Pallachuru, Harijanawada, Pellakur Mandal, Nellore District.
2 G.Venkatragaiah, S/o. G.Polaiah
R/o Pallachuru, Harijanwada, Pellakur Mandal, Nellore District.

..... PETITIONERS

AND

1 Mandal Revenue Officer, Pellakur Mandal, Nellore District.
2 District Collector, Nellore District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue Writ or order or direction more in the nature of Mandamus declaring the action of the respondents in taking steps to assign the land admeasuring 4 acres covered by Sy.No.277/1 of Palachuru Village, Pellakuru Mandal, Nellore District, in favour of 3rd parties without cancelling the DKT patta already granted in favour of Sri A.Yarrayya as illegal and void and consequently direct the 1st respondent to grant DKT patta in favour of the petitioner in respect of the said land.

Counsel for the Petitioners:MR.K.BATHI REDDY

Counsel for the Respondent Nos.1 and 2:G.P. FOR REVENUE (Assignment)

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.13920 OF 2003

ORDER:

The two petitioners filed present Writ Petition with the following allegations. The petitioners belong to Scheduled Caste. First petitioner and his uncle one A.Yarrayya made an application to revenue authorities for assignment of agricultural land. The Tahsildar granted DKT patta in 1972 in the name of Yarrayya in respect of the land in S.No.277/1 of Palachuru Village admeasuring Act.4.00. Yarrayya gave Acs.2.00 out of Acs.4.00 to first petitioner. First petitioner and Yarrayya reclaimed the land and started cultivation by raising crops. Subsequently, in 1975 Yarrayya sold Acs.2.00 of land to K.Ramanayya under agreement of sale dt.15.1.1975. First petitioner purchased said land from K.Ramanayya under another agreement of sale dt.15.3.1975 and since then first petitioner, and second petitioner (son of first petitioner) are in possession of the land. After death of Yarrayya and his son Penchalayya, grand-son of Yarrayya, by name Penchalayya relinquished the right in favour of first petitioner by letter dt.7.1.2001. When Penchalaya attempted to sell the land to third parties, petitioners made a representation to first respondent seeking DKT patta marking copies to second respondent, in vain. Now, first respondent without cancelling the DKT patta granted in favour of Yarrayya and without resuming the land is taking steps to assign the land to third parties. The petitioners have

preferential title as they are in possession of the property for more than thirty years and therefore they prayed for a declaration that the action of first respondent in assigning the land to third parties is illegal and for a consequential direction to grant patta in favour of petitioners.

This Court while ordering Notice before admission passed interim orders on 11.7.2003 directing the respondents not to dispossess the petitioners from the land in S.No.277/1 of Palachuru Village. The matter was admitted on 16.12.2003. After receiving the notice the respondents moved this Court by filing W.V.M.P.No.2316 of 2004. As short question is involved, the matter was heard finally with the consent of the parties and is being disposed of.

In the counter affidavit filed along with the W.V.M.P., the Mandal Revenue Officer stated that the land was assigned to Sri Ardhamala Yarrayya of Palachuru Village by the then Tahsildar of Srikalahasti vide DKT patta No.1758/68, dt.16.1.1968, that the said assignee or his legal heirs did not cultivate the land and violated the conditions of assignment, that on inspection it was found that the land was encroached upon by the Kota Ramakrishnaiah and Talari Subrahmanyam, that the original assignee and his son Panchalayya died, leaving behind his first wife and second wife and the two sons of Penchalayya, that after following due process of issue of notice to legal heirs of Penchalayya, land was resumed by proceedings dt.10.4.2003 and that as per the compromise reached between first wife and second wife of Penchalayya, and the children, Acs.1.00 each was assigned to legal heirs of original assignee, and one Acs.1.00 each was assigned to Kota Ramakrishnaiah and Talari Subrahmanyam. It is also further stated that petitioners were never in possession of the land and that as per the terms and conditions of assignment, original assignee cannot alienate the land to others. Though the counter affidavit is filed along with W.V.M.P. on 10.8.2004, no reply affidavit is filed denying the counter averments.

The matter was heard on 20.9.2004 and the learned Assistant Government Pleader for Revenue (Assignment) was directed to produce the file. The file was produced before this Court on 11.10.2004 and this Court perused the same and heard the arguments of the learned Counsel for the petitioners, and the learned Assistant Government Pleader.

Learned counsel for the petitioners relies on a copy of the unregistered sale deed dt.15.3.1975 under which the first petitioner allegedly purchased the land from K.Ramanayya. He also placed reliance on revenue records i.e., adangals for the years 1997-98, 1998-99, 1999-2000, 2000-2001 and 2001-2002, and the entries made therein in column–13 showing the name of petitioners. However, the learned Counsel has not placed any material to show that as on the date of filing the Writ Petition or when the land was resumed by the Mandal Revenue Officer petitioners were in possession of the property. He further contends that petitioners are also poor persons and therefore the purchase made by them is exempted from the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (hereafter called, the Act). **Per contra**, learned Assistant Government Pleader for Revenue submits that the land was assigned to Yarrayya and after his death

Penchalaiah alone was enjoying the land and therefore as Penchalayya died, Mandal Revenue Officer issued notice to the legal heirs of Penchalayya, cancelled the assignment and resumed the land by proceedings dt.10.4.2003. Subsequently, the land was assigned to legal heirs of Yarrayya and two others who are encroachers of the land. The petitioners admittedly purchased the land from the original assignee and therefore they cannot have any enforceable right by reason of void transaction.

I have perused the file which is produced before this Court. The same would show that the allegations made by respondents in their counter affidavit and the averments made by learned Assistant Government Pleader are well supported by the proceedings taken by the Mandal Revenue Officer. The Mandal Revenue Officer, who is competent authority to cancel the assignment under Section 4 of the Act has followed the procedure contemplated under law and resumed the land. In the absence of any acceptable proof – which has not been placed before this Court; there is no substance in the submission of the learned counsel for the petitioners that the resumption proceedings are void for violation of principles of natural justice. The petitioners are not in possession of the land and the counter averments have not been denied specifically. However, the land was resumed on 10.4.2003 even before the Writ Petition is filed and the petitioners cannot have any right to seek assignment of same land. If so advised and if they are landless poor persons, petitioners may make an application to the Mandal Revenue Officer for assignment of other suitable land. In this Writ Petition, no relief can be granted to petitioners.

The Writ Petition, with the above observations, is dismissed, without any order as to costs.

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(V.V.S.RAO, J)

11.10.2004

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To

1 The Mandal Revenue Officer, Pellakur Mandal, Nellore District.
2 The District Collector, Nellore District.

3 2CCs to G.P.for Revenue (Assignment), High Court Bldgs.,

Hyderabad (OUT)

4 2CD copies